



Border Violence Monitoring Network

24 February 2023

Safi and Others v. Greece

Application no. 5418/15

Rule 9 Communication
to the Council of Ministers
Council of Europe





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Border Violence Monitoring Network (BVMN)

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Submission by the Border Violence Monitoring Network (BVMN) pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, on the implementation of *Safi and Others v. Greece (Application no. 5418/15)*¹.

I. Introduction

1. In line with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments, the Border Violence Monitoring Network ("BVMN") hereby presents a **communication with regard to the execution of the individual and general measures in *Safi and Others v. Greece***.
2. BVMN is a network of non-governmental organisations situated along the Balkan and Greek migration route, whose purpose is to monitor and document human rights violations at European borders.² **BVMN works to denounce pushbacks and guarantee safe access to asylum. Since 2017, BVMN has collected more than 1,600 testimonies of pushbacks.** With such evidence BVMN produces

¹ <https://hudoc.echr.coe.int/fre?i=002-13740>

² BVMN is represented under the legal framework of Rigardu e.V.

comprehensive reports, analyzing trends in border violence.³ As well as coordinating participation in legal processes at national, regional and international levels, BVMN routinely files submissions to judicial and international bodies outlining rights violations during pushbacks, including legal briefings to Special Rapporteurs on the use of torture during pushbacks.⁴ BVMN has expertise in and wishes to provide **input on international legal standards linked to the prohibition of *refoulement*, the prohibition of torture, the right to life and the right freedom from arbitrary detention** and other specific obligations in relation to people's rights at borders.

II. Executive Summary

1. The case of *Safi and Others v. Greece (Application no. 5418/15)* concerns the shipwreck of a fishing boat in the Aegean Sea, transporting 27 asylum seekers, and resulting in the death of 11 people, including relatives of the applicants. There were concrete omissions and delays by the authorities in the conduct of the rescue operation, among other failings: the relevant coordination and search centre was only informed when the boat had already half-sunk and a may-day message to ships in the vicinity was only sent when it had sunk completely. After being transferred to the island of Farmakonisi, the survivors of the shipwreck were subjected to a strip and body search in public, on an outdoor basketball court, where they were forced to undress. The behaviour of the Greek authorities was found to be degrading treatment by the Court. The subsequent investigation conducted by authorities into the responsibility of the Greek Coast Guard in the shipwreck and the death of 11 people on board had serious deficiencies: excluding the survivors from the legal case and failing to ensure accurate interpretations of the statements taken from the survivors.
2. In its judgment, **the Court has found Greece guilty of violating Article 2, in both its procedural and substantive aspects, and Article 3 of the European Convention on Human Rights (ECHR)**. The above mentioned provisions relate to the right to life, ineffective investigation into the fatal shipwreck of the ship, and degrading treatment for the manner body searches of survivors were conducted in public. The judgment became final on 07/10/2022.
3. In the light of the **systematic nature of the violations found in the case of *Safi and Others v. Greece***, Border Violence Monitoring Network calls on the Committee of Ministers:

Individual Measures

³ See for example: BVMN. 2021. Annual Torture Report 2020. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March 2020)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks>.

⁴ See for example: BVMN. 2021. Submission to the UN Committee on Economic, Social and Cultural Rights on Bosnia-Herzegovina. Available at: <https://www.borderviolence.eu/submission-to-cescr-on-bih/> and BVMN. 2021. Submission to the UN Rapporteur on Torture Regarding Greece. Available at: <https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-torture-regarding-greece>

- A. Ensure **non-pecuniary damages** are granted;
- B. Ensure **effective investigations** into the crimes committed against the applicants in Greece, by requesting that the Greek authorities reopen the investigation and ensure the adequate involvement of the victim's relatives in its proceedings.

General Measures

- C. Classify the case under **enhanced supervision** considering that human rights violations perpetrated at sea are a widespread practice and an underlying systemic problem.
- D. Call on Greece to improve the effectiveness and independence of the independent monitoring mechanism, namely:
 1. The mechanism **should be independent** from the government, and as such should receive **funding outside of national sources**. Grants should be transferred to the mechanism directly from European institutions. Additionally the executive should not be involved in the selection process for the board of directors.
 2. National human rights institutions and national preventive mechanisms such as the Greek National Commission for Human Rights that are regularly assessed for their independence or are subject to international standards should be part of the mechanism to ensure independence.
 3. The mechanism should have the power to **trigger investigations** into rights violations on its **own initiative**.
- E. Ensure that Greece will conduct more effective investigations into alleged violations of Article 2 ECHR, which include **access to interpretation services** and **proper participation of the victims or survivors**.

III. Individual Measures

A. Ensure non-pecuniary damages are granted

1. Regarding the non-pecuniary damages costs and expenses, Greece should ensure that the sum liquidated by the Court is within the designated time from the date the judgment became final.

B. Ensure effective investigation into crimes committed towards the family

1. Under Article 2 of the Convention, the Court found that the Greek authorities failed to conduct an effective investigation into the circumstances leading to the sinking of the boat, which resulted in the death of 11 people, including relatives of the applicants, and put the lives of the applicants in danger.
2. Taking into consideration the suffered loss of life - not capable of being remedied by just satisfaction because of the outcome of the domestic proceedings - we demand that Greece **fully reopen the**

investigation and judicial proceedings at the domestic level, following the judgment of the European Court of Human Rights that, under the procedural head of Article 2 (the right to life), the national authorities had not carried out a thorough and effective investigation capable of shedding light on the circumstances in which the boat had sunk.

3. The judgment of the ECHR meets the requirement that, according to the Recommendation No. R(2000)2 of the Committee of Ministers, ‘the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings at issue.’⁵. Moreover, we recommend that the domestic investigation covers - in addition to the circumstances surrounding the sinking of the boat - the degrading treatment experienced by 12 of the applicants when they arrived on the Greek island after their boat had sunk, who were ordered to undress at the same time and in a public place in front of people on an outdoor basketball court.
4. To comply with the procedural requirements of Article 2, any additional investigations into the sinking of the ship should involve the victim’s next-of-kin in the procedure to the extent necessary to safeguard his or her legitimate interests (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 167).
5. Under Greek law, there exists both the possibility and the obligation for the investigation to be re-opened. According to Article 43 paragraph 6 of the Code of Penal Procedure, the prosecutor has an obligation to reopen a case when new evidence appears that, in the prosecutor’s view, justifies the re-opening of the case.⁶ The Court’s judgment *Safi and Others v. Greece* should constitute such evidence.

IV. General measures

C. *Enhanced supervision*

1. We recommended that the Committee of Ministers classifies the case to **enhanced supervision** considering that **human rights violations** perpetrated by the Greek authorities **at sea** are a **widespread and systemic practice**.
2. Border Violence Monitoring Network recorded since 2019 to the time of writing **199 testimonies** from survivors of pushbacks. We estimate that over **11,357 people were pushed back** or summarily expelled from Greece in this period of time. The statistics include pushbacks in the Aegean Sea⁷ and at the land border between Greece and Türkiye. Testimonies of survivors, analysis and statistics of violations have been recorded in the Black Book of Pushbacks (2022), a publication meant to compile

⁵ Committee of Ministers. (2000, January). *Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights*. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2f06

⁶ Code of Penal Procedure, 4620/2019. Article 43 paragraph 6. Available at: <http://elib.aade.gr/elib/view?d=/gr/act/2019/4620/art/38>

⁷ BVMN. 2020. “Once they put us on the coast guard ship, they shot our boat approximately 20 times”. Available at: <https://tinyurl.com/ym3ddr9j>

human rights violations at Europe's borders⁸.

3. According to BVMN cumulative pushback data, **in 91% of all reported** pushbacks excessive violence had been used that may amount to **violations of Articles 2 and 3 ECHR**. **Pushbacks at sea** are accompanied by dangerous interceptions, creating **waves to push dinghies back** into Turkish territorial waters, **destruction and removals of boat engines** while passenger are still on-board, **puncturing inflatable dinghies** with passengers on-board, **reckless and speeding pulling back dinghies** into Turkish waters, **shots fired** in the air/water, theft of personal belongings, abandonment of passengers in the damaged boats or in a **motorless life rafts**⁹, **beatings with police-issued batons** and physical violence. Reports from Alarm Phone¹⁰ and Mare Liberum, independent NGOs, report that **intentional delays to deploy search and rescue**¹¹ or **refusal to deploy search and rescue** at sea from the Greek authorities is a common practice that leads to endangerment of people's lives (Article 2 ECHR).
4. Forensic Architecture¹², created, with BVMN's contribution among other groups, a comprehensive database, the **Drift Back platform**¹³, where **experts verified and analysed more than 1,000 cases of pushbacks** from Greece, between February 2020 and February 2022.
5. Numerous reports of human rights violations attesting to this practice were shared in the media, uncovered by independent investigators and condemned by human rights institutions. Der Spiegel published a confidential report by Frontex, the EU Border and Coast Guard Agency, showing Frontex **vessels blocking dinghies from accessing Greek territorial waters** in cooperation with the Greek Coast Guard¹⁴. BVMN 2020 visual investigation found that the Greek Coast Guard, acting in official capacity, **pushed back into Turkish territorial water a dinghy** in contravention with its international obligations in allowing people to access asylum and in a manner that violates Article 2 and 3.¹⁵ The **UN Special Rapporteur on the Rights of Migrants** in its 2021 report concluded "that **the practice of pushbacks is widespread**, and in many contexts it has become **a routine element of border governance**, with a serious negative impact on the human rights of migrants". He made recommendations that states, including Greece, "put an end to pushback practices, respect fully the prohibition of collective expulsion and uphold the principle of non-refoulement".¹⁶

⁸ BVMN. 2022. *Black Book of Pushbacks*. Available at: <https://tinyurl.com/47k7wxmc>

⁹ BVMN. 2021. *Submission to the 39th Session of the Universal Periodic Review: Greece*. Available at: <https://tinyurl.com/wdppmhr>

¹⁰ Alarmphone. 2020. *Aegean Regional Analysis*. Available at: <https://tinyurl.com/5n8cmkps>

¹¹ The Guardian. 2021. *Greece lets boat packed with Afghan refugees dock after four days at sea*. Available at: <https://tinyurl.com/5n6nzbr4>

¹² Forensic Architecture is a research agency, based at Goldsmiths, University of London, investigating human rights violations including violence committed by states, police forces, militaries, and corporations.

¹³ <https://aegean.forensic-architecture.org/>

¹⁴ Spiegel International. 2020. *EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign*. Available at: <https://tinyurl.com/34sxjn5j>

¹⁵ BVMN. 2020. *BVMN Visual Investigation: Analysis of Video Footage Showing Involvement of Hellenic Coast Guard in Maritime Pushback*. Available at: <https://tinyurl.com/y5xa2wbv>

¹⁶ UN Human Rights Council. 2021. *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*. Available at: <https://tinyurl.com/4t8pcvm2>

6. Despite continuously denying allegations of pushbacks¹⁷ and human rights violations against asylum seekers at sea and land, the Greek parliament released a *communiqué* attesting that between January-October 2022 **over 230,000 people were prevented entry onto Greek territory**.¹⁸ The methodology behind the statistics has not been shared and therefore indicates that asylum seekers were pushed back or summarily expelled from Greece.
7. Between 2020 and 2022, the ECtHR communicated **40 cases submitted against Greece** related to violations in the context of “**pushbacks**” or “**summary expulsions**” out of which:
 - 24 applications (38 complainants) invoke violations of Articles 2 and 3 ECHR in the context of pushbacks in the Aegean Sea,
 - 14 applications (20 complainants) claiming violations of Articles 2 and 3 in the context of pushbacks at the Evros borders, from Greece to Türkiye,
 - two additional applications (7 complainants) submitted in 2014 and 2017, respectively, invoke violations of the same Articles 2 and 3 but the location is not specified in the communications.
8. One case on pushbacks or summary expulsions (F.A.A. v Greece, 2020) was submitted at the **UN Human Rights Committee** invoking violations of Articles 6 (right to life), 7 (prohibition of torture and cruel, inhuman and degrading treatment) and 9 (right to liberty and security) of the International Covenant on Civil and Political Rights (ICCPR).
9. Since 2014, UNHCR recorded 2,681 people dead or missing in the Aegean Sea¹⁹.
10. In the judgment *Safi and Others v Greece*, the evidence presented to the case was not sufficient for the Court to rule whether the operations conducted by the Greek Coast Guard attempted to return the boat into Turkish territorial waters, due to a lack of effective investigation by the Greek authorities. However, the Court did assess that the Greek authorities did not act in a manner to ensure the safety of the applicants at sea and did not engage in a rescue operation as dictated by law, including **delaying to contact the national coordination and search centre**. BVMN argues, based on evidence of similar practices, that whether in this case the authorities did or did not attempt to push people back to Türkiye, **ongoing violations of human rights in the Aegean Sea are intentionally perpetrated by the Greek authorities in a systematic and widespread manner that calls for enhanced supervision**.

D. *Independent monitoring mechanisms*

1. In *Safi and Others v Greece*, the Court was unable to rule on whether there was a pushback due to lack of effective investigation by the government. It is for this reason that an independent monitoring

¹⁷ ECRE. 2022. *Greece: Government States 150,000 People have been “Averted” but Denies Pushbacks, ‘Safe Third Country’ Inadmissibility Decisions Continue as Hate Crimes are On the Rise in Türkiye*. Available at: <https://tinyurl.com/324kmeyb>

¹⁸ Minos Mouzourakis. 2022. Twitter. Available at: <https://tinyurl.com/9xd3wvvp> ; Ekathimerini. 2023. “Greece needs EU help to protect external borders, minister says”. Available at: <https://tinyurl.com/n7fyk32v>

¹⁹ UNHCR. 2023. *Dead and Missing at Sea*. Available at: <https://data.unhcr.org/en/dataviz/95>

mechanism is essential, both as a means to find the truth when the facts are contested by the parties as was in the present case, and also as a preventative measure to ensure fast and effective search and rescue operations take place as soon as a call of distress is sent.

2. In October 2021, the Greek government announced it was planning to designate the National Transparency Agency (EAD) to act as an independent human rights monitoring mechanism that would investigate reports of migrant pushbacks.²⁰
3. On 29 March 2022 the National Transparency Agency issued a press release, stating that its three month long investigation into alleged forced returns was completed and that there was no evidence of these allegations.²¹ When observing well-documented testimonies recorded by BVMN, as well as the findings of other organisations such as Alarmphone, Lighthouse Reports and the UNHCR that suggest the opposite, **serious doubt must be casted on the suitability and efficacy of the Agency to act as an independent monitoring mechanism.**
4. The first issue with Greece's current mechanism is that the National Transparency Authority is not a truly independent body. The Agency **receives its funding directly from the government** in the budget, which is assessed and modified each year.²² Additionally, **the selection process** for both the board of directors and the executive director of the National Transparency Agency **is done by the government.**²³
5. On this note, we argue that national human rights institutions and national preventive mechanisms such as **the Greek National Commission for Human Rights and the Greek Ombudsman**, which are regularly assessed for their independence or are subject to international standards guaranteeing independence, as well as non-governmental organisations and international bodies, should be tasked with **managing or contributing to the mechanism.**
6. Regarding the funding of the independent mechanism, we argue that any financial resources should be made available directly under funding, such as the EU's Integrated Border Management Fund and under other non-national sources, and **provided directly to the monitors.** A mechanism wholly **funded by national means is susceptible to both financial and political pressure from national authorities and can never truly achieve the goal of human right protection.**
7. In order to be effective, the independent border monitoring mechanisms must have frameworks in place **to hold States and Institutions accountable for abiding by the agreed mechanism**, while **ensuring transparency and access to justice.** The mechanism must have **the power to trigger**

²⁰ Ekathimerini. October 2021. *Transparency Authority may probe pushback claims*. Available at: <https://tinyurl.com/2p96tkfw>

²¹ National Transparency Authority. 2022. *Completion of an investigation on the management of migration flows on Greek territory and the provisions of a publication on informal forced returns (pushbacks)*. Available at: <https://tinyurl.com/3m7ctfhc>

²² Law 4622/2019 Article 92. Available at: <https://tinyurl.com/4zb3u7a4>

²³ Law 4622/2019 Article 88. Available at: <https://tinyurl.com/4zb3u7a4>

investigations into misconduct at its own initiative, and have access to documentation, places of detention and other relevant sites to conduct such investigation.²⁴

E. Access to interpretation services and involvement of the applicants in the criminal proceedings

1. In the case *Safi and Others v. Greece*, the European Court of Human Rights found that Greece did not fulfil its procedural obligation to carry out an effective investigation into an alleged breach of the right to life, as set out by Article 2 of the ECHR²⁵. Specifically, the Court noted that there had been several shortcomings affecting the effectiveness of the proceedings, including the **lack of interpretation services and the lack of a proper involvement of the applicants**.
2. Concerning the lack of adequate interpretation, the applicants stated that **no certified interpreters in the language they understood had participated in the proceedings**, specifically when statements had been taken from the applicants. It follows that the records of the applicants' statements did not reflect their content. On the contrary, as noted by the Court, Greek authorities included the impartial statements in the case files until the public prosecutor decided to conclude the proceedings, and failed to investigate such flaws in the documentary evidence.
3. In *Rahimi v. Greece*, an asylum seeker was to be deported from Greece and was unable to challenge the unlawfulness of his **arrest and detention due to language difficulties**²⁶. In *Tabesh v. Greece*, an Afghan national that was detained pending deportation alleged that he had been **notified of reasons for arrest in a language he did not understand**²⁷. In 2016, the Report to the Greek government on the visits to Greece conducted by the European Committee on the Prevention of Torture reported a **“lack of available interpreters at both centres visited (reception and identification centres) which inevitably led to significant problems in communication between the detained foreign nationals and the police or other staff”**.
4. Furthermore, when assessing whether the investigations comply with the procedural requirement under Article 2 ECHR, the participation of the deceased's relatives in the investigation must also be taken into account²⁸. In *Safi and Others v. Greece*, since **very complex aspects of the case were known only to the authorities** and since the applicants' request to access the recording of the communications between the coastguard and the military base was denied, the Court found that Greece failed to adequately include the applicants in the proceedings²⁹.

²⁴ ecre. 2020. *Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability*. Available at: <https://tinyurl.com/2p86hcxp>

²⁵ ECtHR, *Safi and Others v. Greece*, no. 5418/15, 07 July 2022.

²⁶ ECtHR, *Rahimi v. Greece*, no. 8687/08, 05 April 2011.

²⁷ ECtHR, *Tabesh v. Greece*, no. 8256/07, 26 November 2009.

²⁸ ECtHR, *Safi and Others v. Greece*, no. 5418/15, § 116, 07 July 2022

²⁹ *Ibid.*, § 126.

5. In order to qualify as effective, an investigation must be adequate, and therefore, must lead to the identification of those responsible, and where appropriate, to their punishment³⁰. According to Report of the Greek National Commission for Human Rights, “**no case of pushback has ever resulted in a trial before a court**”, but “**most of them are rejected as unsubstantiated or are still pending**”³¹. This reflects the ineffectiveness of Greek investigations into alleged incidents of pushbacks, and how this is a **structural problem** within the Greek judicial system.
6. Language barriers and improper participation in the proceedings **prevent migrants from fully enjoying their right to access a non-biased judicial system and proceedings**. In light of this, BVMN urges Greece to **promptly address such shortcomings** in the proceedings, in order for the Greek framework established for the protection of life **to be effectively implemented and its violations to be effectively punished and sanctioned**.

³⁰ ECtHR, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016.

³¹ ENNRI and GNCHR. May 2021. *National Report on the situation of human rights of migrants at the borders*. Available at: <http://ennhri.org/wp-content/uploads/2021/07/Greek-National-Report.pdf>